

No. 9/7/86-6 Lab/5763.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of (i) State Transport Controller, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Hissar :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 200 of 83

between

SHRI RAM KALA, WORKMAN AND THE MANAGEMENT OF (i) STATE
TRANSPORT CONTROLLER, HARYANA, CHANDIGARH, (ii) GENERAL
MANAGER, HARYANA ROADWAYS, HISSAR

Present :—

Shri S. S. Gupta, A. R. for the workman.

Shri Jagbir Singh, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ram Kala and the management of (i) State Transport Controller, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Hissar, to this Court, for adjudication,—*vide Haryana Government Gazette Notification No. 58675-80, dated 9th November, 1983 :—*

Whether the termination of service of Shri Ram Kala is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he has been in the employment of the respondent for the last about eight years, whose services were terminated by the respondent on 6th July, 1981 without any fair and proper enquiry because, in the enquiry proceedings, he was not given an opportunity of complete participation and that the procedure followed by the Enquiry Officer was in flagrant disregard of the often sanctified principle of natural justice and as such enquiry conducted in this case was not fair and proper and resultantly the order of termination passed upon the same was illegal and unlawful.

3. In the reply filed by the respondent, preliminary objections taken are that the present reference is not maintainable in the present form and that the respondent has since lost confidence in the workman and whose services were terminated after fair and valid enquiry, in which, the workman was given an opportunity of participation and as such, the order of termination is lawful and legal.

4. On the pleadings of the parties, the following issues were settled for decision on 22nd February, 1985 :—

- (1) Whether a valid and proper domestic enquiry was held by the respondent before terminating the services of the petitioner? O.P.M.
- (2) Whether the respondent has since lost confidence in the workman?
O. P. M.
- (3) Whether the reference is not maintainable in the present form? O. P. M.
- (4) As per terms of reference.

5. The management examined MW-1 Shri Rajbir Singh, Traffic Manager, who conducted the enquiry proceedings, MW-2 Shri Ramesh Kumar, Clerk, MW-2 Shri Partap Singh, Inspector, MW-4, Shri Bharat Bhushan, Inspector and the workman appeared as his own witness as WW-1.

6. Authorised Representatives of the parties heard. My findings on the issues framed are as below.—

Issues No 1.—

7. The enquiry in this case was conducted by Shri Rajbir Singh, the then Traffic Manager, who was examined as MW-1. The management has placed on record original enquiry proceedings recorded by Shri Singh. There are two charges against the petitioner. The same relates to the wrong punching of tickets regarding seven passengers bound from Hansi to Mayar when the checking was made by Shri Partap Singh, Inspector on 26th December, 1980 at Mayar bus stop. The second charge relates to the embezzlement of a sum of more than Rs 80. Checking was made on 27th December, 1984.

by Shri Bharat Bhushan, Inspector in the presence of Shri P. N. Parvana, also an Inspector, who happen to be in the bus at the time of checking. The allegations are that the workman had not issued tickets to four passengers bound from Faridabad to Delhi and thereby embezzled a sum of Rs. 76.20. Further more, he had issued tickets for Rs. 14 each to twenty-six passengers, whereas actual fare charged by him was Rs. 14.10. Checking was made at bus stand Mundhal.

8. The Enquiry Officer examined both the Inspectors S/Shri Partap Singh and Bharat Bhushan. First of all he examined Shri Partap Singh and thereafter recorded the statement of the petitioner and further afforded an opportunity to produce evidence in defence. He then recorded the statement of Shri Bharat Bhushan, Inspector and thereafter statement of the petitioner was recorded. He then recorded the statement of another witness of the prosecution Shri P.N. Parvana, who was not on duty but was in the bus at the time of checking. After recording his statement as witnesses of the management, the Enquiry Officer recorded the statement of three witnesses produced by the petitioner. The learned Authorised Representative of the petitioner rightly contended that since the statement of the petitioner was not recorded after the management had concluded its evidence before the Enquiry Officer, on this ground alone enquiry should be held to be defective because the petitioner was not afforded any opportunity to explain the evidence recorded against him. In my opinion, the procedure adopted by the Enquiry Officer was illegal and unlawful, prejudicial to the cause of the petitioner and as such, on this ground alone the procedure followed by the Enquiry Officer is held to be irregular and unlawful and in flagrant disregard of the settled principles of natural justice. So, the enquiry held in this case was not fair and proper as such, this issue is answered against the management.

Issues No. 3:

9. No. arguments were addressed on behalf of the respondent on this issue. Since there was termination of services of the petitioner and the said order of termination has been challenged by him, there is no infirmity in the order of reference.

Issue No. 2 and 4:

10. These issues have been clubbed together for decision, because they defy separate discussion. the charges levelled against the petitioner have already been detailed by me while disposing of issue No. 1 and as such, I need not suffer repetition. To prove the same, the management has examined before the Court Shri Partap Singh, Inspector as MW-3 and Shri Bharat Bhushan, Inspector as MW-4. Both of them have made statements completely in corroboration of the report against the petitioner. The learned Authorised Representative of the petitioner Shri Gupta contended that since the petitioner was not having tickets of the denomination of 10 nP., so, he charged a sum of Rs. 14/- each from twenty-six passengers travelling from Hisar to Delhi, though the actual fare was Rs. 14.10 and as such, no embezzlement was committed by the petitioner. The plea may be plausible but what about the other four passengers, who were found travelling from Fatehabad to Delhi, to whom the petitioner had not issued any tickets, though checking was made at the bus stop at Mundhal, which is at a distance of seventy-four kilometers from Fatehabad, from where the passengers boarded the bus. The amount embezzled by the petitioner is Rs. 76.20. Unpunched tickets for the said amount were collected from the petitioner by the checking staff and have been tagged with the enquiry file. The defence offered by the petitioner is not plausible, though the enquiry has not been held to be fair and proper but the charge against the petitioner stand otherwise proved from the evidence adduced by the respondent before this Court. It has been held in recent authority reported in 1984 (3) SIR. 514 *State of Punjab and others V/s. Surat Singh and others* that in case of the embezzlement of Government money by the Conductors of the State Transport, ordinarily the Court should not order reinstatement and should explore the possibility of providing alternative employment to the delinquent workman. In the present case, no such avenue is open to the petitioner, though enquiries were made from the Law Officer of the respondent in the Court. Under these circumstances, reinstatement cannot be ordered and the management was justified in losing confidence in the workman, because if he is reinstated he shall have an opportunity to indulge in acts of embezzlement. So, reinstatement cannot be ordered, because the order of termination was justified. The petitioner is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated the 26th May, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endst No, 200-83/848, dated the 24th June, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.